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BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF )  
ACE GALVANIZING, INC., )  
Appellant, )  
v. )  
STATE OF WASHINGTON, )  
DEPARTMENT OF ECOLOGY, )  
Respondent. )

PCHB No. 78-190

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the appeal of a \$3,000 penalty for the alleged violations of RCW 90.48.080, RCW 90.48.160 and respondent's Order Docket No. DE 76-286, came before the Pollution Control Hearings Board, Dave J. Mconey, Chairman, Chris Smith and David Akana (presiding) at a formal hearing on November 2, 1978 in Seattle.

Appellant was represented by its attorney, Arthur T. Bateman; respondent was represented by Laura E. Eckert, Assistant Attorney General.

Having heard the testimony, having examined the exhibits, and having considered the contentions of the parties, the Board makes these

DA/LB

1 FINDINGS OF FACT

2 I

3 Appellant owns and operates a galvanizing plant located at 429  
4 South 96th Street, an industrial area in Seattle. Appellant processes  
5 60,000 to 100,000 pounds of steel each day. After being galvanized,  
6 the finished products are stored in the open upon three acres of pavement.  
7 Appellant's facilities, shop and offices cover the remaining two  
8 acres of its property.

9 Surface runoff from appellant's property is gathered by a system  
10 of catch basins and drain pipes and collected at two sumps located at the  
11 northeast boundary, which is the lowest area on the property. From the  
12 sumps, the runoff discharges into a drainage ditch and from there to  
13 the Duwamish River, a water of the state. At one time, appellant  
14 regularly discharged its effluent from its galvanizing processes into the  
15 sump.

16 II

17 The Duwamish River is classified as a Class B water (WAC 173-201-080)  
18 which means that pH levels are to be within a 6.5 and 8.5 (fresh water) and  
19 7.0 to 8.5 (marine water) range, with a man-caused variation within a range  
20 of less than 0.5 units. There is no specific state standard for zinc  
21 concentrations. However, the U.S. Environmental Protection Agency criteria  
22 document recommends zinc concentration levels below 0.01 parts per million  
23 (ppm) in the receiving water to protect aquatic life.

24 III

25 On June 3, 1975 appellant was issued a National Pollutant Discharge  
26 Elimination System (NPDES) Waste Discharge Permit No. WA-002225-0 by  
27 respondent which allowed effluent discharge of zinc (0.3 mg/l average to

1 0.5 mg/l maximum) and effluent pH level of between 6.5 and 8.5 until  
2 December 31, 1976. Thereafter, although the permit was ambiguous, appellant  
3 was not to discharge any more zinc than the amount contained in its water  
4 supply, and was to keep its effluent pH level between 6.5 and 8.5 from its  
5 property, until the permit expiration date of June 30, 1977. Thereafter,  
6 absent a permit, no discharge was allowed.

#### 7 IV

8 As a result of samples taken during June, July and August, 1976,  
9 respondent determined that appellant's discharges contained excessive  
10 amounts of zinc, and had pH levels below 6.5. Thereafter, appellant  
11 was ordered to comply with the terms of its NPDES permit by March 1,  
12 1977 in Order Docket No. DE 76-286. Appellant was also assessed a  
\$5,000 penalty for the excessive levels in its discharges.

#### 14 V

15 Numerous samples taken at the sump during 1976 and 1977 show  
16 frequent and substantial non-compliance with the terms of the NPDES  
17 permit.

#### 18 VI

19 Appellant terminated all discharges from its galvanizing operation  
20 within the plant buildings and closed all drains except for a blowdown  
21 drain from two electric boilers by January 1, 1977. Water used in the  
22 galvanizing process was thereafter recirculated in a closed system.

#### 23 VII

24 Appellant should have been aware, although it was not, that rainfall  
25 created an "unusual" contamination problem. (Exhibit R-20). Appellant,  
even with an earlier "closed system" installed (Exhibit R-36), was also

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 aware that high concentrations of zinc and low pH levels were recorded  
2 from its property by respondent.

3 VIII

4 On January 13, 16, 25 and 31, February 3, and April 4 of 1978,  
5 respondent sampled effluent from the discharge pipe at appellant's sump.  
6 The samples were analyzed and disclosed high zinc concentrations  
7 (ranging between 45 to 150 mg/l) for each day on which a sample was taken.  
8 It was also determined that the pH level of the effluent was below 6.5  
9 on each day except January 13, and below 6.0 on January 25, 1978.

10 The effluent sampled by respondent came from surface runoff water on  
11 appellant's property. By flowing over appellant's exposed storage  
12 area, the water increased its concentration of zinc and also became more  
13 acidic.

14 IX

15 For the foregoing occurrences, respondent issued a notice of penalty  
16 in the amount of \$3,000 for the violation of RCW 90.48.080, .160 and  
17 Order Docket No. DE 76-286. Appellant's application for relief from  
18 the penalty was considered and denied by respondent, resulting in the  
19 instant appeal.

20 X

21 Any Conclusion of Law which should be deemed a Finding of Fact  
22 should be adopted as such.

23 From these Findings the Board comes to these

24 CONCLUSIONS OF LAW

25 I

26 Water "pollution" is "such contamination, or other alteration of the

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

1 physical, chemical or biological properties, of any waters of the  
2 state . . . ." RCW 90.48.020. Appellant's discharge of its low pH level  
3 effluent on January 25, 1978, caused pollution of the state's waters.

4 RCW 90.48.080 makes unlawful the discharge into waters of the state  
5 any matter that shall cause or tend to cause pollution of such waters  
6 according to the determination of the department. Because there apparently  
7 is no standard or effluent limitation for zinc, we can find no violation  
8 therefor. However, appellant caused, permitted, or suffered to be discharged  
9 pollutants (pH level) to enter into waters of the state on January 25, 1978.  
10 Such discharge caused pollution of the Class B waters of the Duwamish  
11 River. Further, appellant had no valid permit to discharge into public  
12 waters, the surface runoff water which it contaminated. Accordingly,  
appellant is subject to a penalty in the amount of up to \$5,000 a day for  
14 every violation pursuant to RCW 90.48.144(2) for discharging its pollutants  
15 without a permit, or RCW 90.48.144(3) for discharging polluting matter  
16 into state waters.

## 17 II

18 In this case, a penalty is necessary to give effect to the policy  
19 enunciated by the Legislature and RCW 90.48.010 and the purposes of  
20 the Act. The amount of the penalty, \$3,000, is reasonable in light  
21 of the record in this matter which include many samples taken by respondent  
22 over the years, most of which show substantial violations of the now-  
23 expired permit conditions, earlier regulatory orders, and a previous  
24 penalty. We also note that the total amount of the penalty, \$3,000, is  
25 less than the maximum amount that the department could have assessed  
26 for the violations.

27 FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND ORDER

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III

Appellant appears to have misunderstood its obligations under the permit and orders issued by the department. However, this misunderstanding does not excuse the instant violations which have occurred. Appellant states that it will give best efforts to solve the effluent discharges and has reached an agreement with respondent as to what is to be done. (See stipulated agreement in Ace Galvanizing, Inc. v. Department of Ecology, PCHB No. 78-131. See Exhibit No. 1, attached). In view of the foregoing, the payment of the \$3,000 penalty should be suspended in part on condition that appellant comply with the terms of its agreement.

IV

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The \$3,000 civil penalty is affirmed, provided however, that \$2,750 of said civil penalty is suspended on condition that appellant comply with the terms of its agreement with the Department of Ecology reached in PCHB No. 78-131.

DATED this 14<sup>th</sup> day of December, 1978.

POLLUTION CONTROL HEARINGS BOARD

  
DAVE J. MOONEY, Chairman

  
CHRIS SMITH, Member

  
DAVID AKANA, Member

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER - 6